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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER BUTLER,

Defendant and Appellant.

D056990

(Super. Ct. No. RIF134965)

APPEAL from a judgment of the Superior Court of Riverside County, Craig G. Riemer, Judge. Affirmed.

A jury convicted Christopher Butler of first degree murder (Pen. Code, § 187, subd. (a))<sup>1</sup> and of active participation in a criminal street gang (§ 186.22, subd. (a)). On the first degree murder conviction, the jury made true findings that Butler (1) personally and intentionally discharged a firearm causing great bodily injury or death (§§ 12022.53, subd. (d), 1192.7, subd. (c)(8)); (2) committed the crime for the benefit of a criminal

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<sup>1</sup> Unless otherwise noted, all further statutory references are to the Penal Code.

street gang with specific intent to promote, further or assist in any criminal conduct by gang members (§ 186.22, subd. (b)); and (3) was an active participant in a criminal street gang, with the murder carried out to further the activities of the criminal street gang (§ 190.2, subd. (a)(22)). The trial court sentenced Butler to life in prison without the possibility of parole, along with an additional consecutive term of 25 years to life.

Butler contends the trial court erred in admitting (1) certain testimony from a gang expert that purportedly opined on the ultimate issue of Butler's intent; and (2) evidence that Butler was implicated in a home invasion robbery several weeks before the murder. We conclude that Butler's contentions are without merit, and accordingly we affirm the judgment.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

Just after the students at Vista del Lago High School in Moreno Valley were dismissed for the day on February 12, 2007, Butler — who was 19 years old at the time — arrived in the neighborhood adjacent to the school with two friends. Butler was not a student at the school.

While Butler and his friends were standing on the corner across from the high school, a red car drove by. The occupants of the red car threw up gang signs and said "D Blocc," referring to the Dorner Blocc street gang that is prevalent at the school. Butler or his friend Andrew Cage responded by saying "Fuck D Blocc." One witness heard the occupants of the red car say "Fuck Sex Cash." That comment referred to another Moreno Valley street gang — Sex Cash Money (Sex Cash) — which is a rival to

the Dorner Blocc street gang. At trial, several people testified that Butler and Cage were members of Sex Cash.

As Butler and Cage walked down the street, a group of four or more high school students, at least some of whom were members of the Dorner Blocc gang, approached Butler and Cage in a hostile manner. Butler or Cage stated "Fuck D Blocc" and "Sex Cash." The other group said "Dorner Blocc," and directed comments to Butler and Cage that were disrespectful to Sex Cash. As the confrontation escalated, one of the high school students — 15-year-old freshman Allen White — stated to Butler, "Oh, so you gonna shoot me?" Butler said "Yeah." Butler then took out a gun from his waistband and shot White in the back of the head from a distance of about 15 or 18 feet, killing him. There was evidence at trial that White was a member of the Dorner Blocc gang.

Butler ran from the scene and was later arrested. He was tried on two substantive charges — first degree murder (§ 187, subd. (a)) and active participation in a criminal street gang (§ 186.22, subd. (a)). Sentencing enhancements attached to the first degree murder count alleged that Butler (1) personally and intentionally discharged a firearm causing great bodily injury or death (§§ 12022.53, subd. (d), 1192.7, subd. (c)(8)); and (2) committed the crime for the benefit of a criminal street gang with specific intent to promote, further or assist in any criminal conduct by gang members (§ 186.22, subd. (b)). As a special circumstance authorizing the imposition of a life term, it was further alleged that Butler was an active participant in a criminal street gang and committed the murder to further the activities of the gang (§ 190.2, subd. (a)(22)).

Butler testified at trial and admitted to shooting White. However, he claimed that he did not intend to kill White. According to Butler, he shot his gun without aiming it when he saw a member of the other group pull out a gun. Butler admitted that his friend, Cage, was a member of Sex Cash but denied being a member himself.

The jury convicted Butler of both charges and made true findings on the sentencing enhancement and special circumstance allegations. Butler was sentenced to life in prison without the possibility of parole and to an additional consecutive term of 25 years to life in prison.

## II

### DISCUSSION

A. *There Is No Merit to Butler's Contention That the Trial Court Erred in Permitting a Gang Expert to Testify Regarding Butler's Intent*

At trial, the prosecution called Deputy Sheriff Anthony Johnson as an expert on criminal street gangs. Butler contends that the trial court erred by permitting Johnson to respond to questions about whether Butler was an active member of Sex Cash and whether the murder was committed for the benefit of Sex Cash. According to Butler, in answering those questions Johnson impermissibly testified about Butler's intent. As we will explain, Butler may not pursue this argument on appeal because defense counsel did not object to Johnson's testimony at trial. Moreover, Butler's contention is without substantive merit.

1. *The Argument Is Forfeited*

At an in limine hearing, the trial court asked whether there was any objection to the gang expert's anticipated testimony. Citing *People v. Killebrew* (2002) 103 Cal.App.4th 644 (*Killebrew*), defense counsel pointed out that a gang expert "can't testify to what the defendant's specific intent is." Based on that principal, defense counsel stated that he "would be objecting to the gang expert setting a hypothetical based upon the identical facts in this case which would obviously lead the jury to believe the gang expert is talking about Mr. Butler's intent."

At a break in proceedings during trial, while Deputy Johnson was on the stand, defense counsel renewed his objection. He told the trial court, "Deputy Johnson is just getting close to testifying as to information that was brought up in [*Killebrew*], discussing what the defendant's subjective intent or knowledge was at the time. So that's my [Evidence Code section 402 motion], that he not mention what he believes . . . Mr. Butler's intent was or knowledge." The prosecutor responded, "I will not ask for individual intent. I will frame the question . . . whether or not he has an opinion if the crimes committed in this case were done for the benefit or, at the association of or at the direction of Sex Cash. . . . [B]ut I don't expect him to go into [the] territory of what defendant was thinking. That's certainly for the jury to decide." Defense counsel stated, "I'll object on a question by question basis."

The prosecutor's examination of Deputy Johnson proceeded, eliciting testimony that Butler contends on appeal was beyond the scope of proper expert opinion, but to which defense counsel interposed no objection.

As relevant here, the prosecutor asked Deputy Johnson, "As a gang expert, were you able to form an opinion as to whether or not [Butler] was an active participant of Sex Cash . . . on or about February 12, 2007?" Johnson answered that he "formed the opinion that Mr. Butler is an active member of Sex Cash Money."

As also relevant here, the prosecutor asked Deputy Johnson, "And do you have an opinion as to whether the homicide in this case of Allen White was done for the benefit of, at the direction of, or in association with the Sex Cash Money gang?" Johnson opined that "it was done in association with and also for the benefit of the gang." When asked to explain the basis of his opinion, Johnson stated, "Again, based on the area where they were, [the] fact that, . . . even after the challenges were lodged[,] as opposed to just leaving the area or not being there in the first place, . . . based on my knowledge of both of these gangs, knowing that that is an active Dorner Blocc turf area, for members of Sex Cash to be there at the school is, . . . the only logical — the only reason they were there was for that confrontation, to be involved in some type of confrontation. And then after, you know, after the slurs were lodged by both sides, again the confrontation continued and escalated."

Referring to this testimony, Butler argues on appeal, "The gang expert was allowed to testify in his opinion Butler killed White for the benefit of [Sex Cash], and in association with [Sex Cash], that Butler was an active member of [Sex Cash] at the time of the killing, and that 'the only reason they [Butler and Cage] were there was for that confrontation, to be involved in some type of confrontation.' By asking his opinion on the above, the prosecutor was allowed to elicit from the law enforcement expert his

general belief that the gang enhancement should be found true."<sup>2</sup> According to Butler, Deputy Johnson's testimony was improper under *Killebrew, supra*, 103 Cal.App.4th 644, 647, because "[a]n expert may not properly testify as to a defendant's intent or other mental state . . . ."

"Evidence Code section 353, subdivision (a) allows a judgment to be reversed because of erroneous admission of evidence only if an objection to the evidence or a motion to strike it was 'timely made and so stated as to make clear the specific ground of the objection.' Pursuant to this statute, "' . . . 'defendant's failure to make a timely and specific objection' on the ground asserted on appeal makes that ground not cognizable,"'" and the defendant forfeits his appellate arguments based on the erroneous admission of the evidence. (*People v. Demetrulias* (2006) 39 Cal.4th 1, 20-21.) This principle applies equally to the admission of expert witness testimony. (*People v. Doolin* (2009) 45 Cal.4th 390, 448; *People v. Ward* (2005) 36 Cal.4th 186, 211.) Here, although defense counsel stated that he would object on a question-by-question basis, defense counsel made no objection to Deputy Johnson's testimony that Butler now contends was

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<sup>2</sup> The sentencing enhancement under section 186.22, subdivision (b)(1) applies to "any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members." (*Ibid.*) To make a true finding on the special circumstance alleged under section 190.2, subdivision (a)(22), the jury had to find that the defendant "intentionally killed the victim while the defendant was an active participant in a criminal street gang, . . . and the murder was carried out to further the activities of the criminal street gang." (*Ibid.*)

erroneously admitted. Accordingly, Butler has forfeited any appellate challenge to the trial court's admission of that testimony.

Butler contends that defense counsel's general comments objecting to expert testimony on the subject of Butler's intent and knowledge was sufficient to preserve the issue for appeal. We disagree. In light of defense counsel's statement that he would object on a question-by-question basis, the general objection was not specific enough to put the trial court and the prosecutor on notice that defense counsel wanted any specific testimony to be excluded. (See *People v. Partida* (2005) 37 Cal.4th 428, 435 [objection must be specific so that "the party offering the evidence can respond appropriately and the court can make a fully informed ruling"].)<sup>3</sup>

## 2. *The Argument Lacks Substantive Merit*

Even had Butler not forfeited his appellate argument, we would conclude that his argument lacks substantive merit.

"As a general rule, a trial court has wide discretion to admit or exclude expert testimony. . . . An appellate court may not interfere with the exercise of that discretion unless it is clearly abused." (*People v. Valdez* (1997) 58 Cal.App.4th 494, 506, citations omitted.)

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<sup>3</sup> Butler argues for the first time in his reply brief that defense counsel offered ineffective assistance by not interposing an objection to the testimony at issue here. We will not consider this argument because it was raised for the first time in the reply brief. (*People v. Zamudio* (2008) 43 Cal.4th 327, 353 ["Normally, a contention may not be raised for the first time in a reply brief."].)



Butler's argument is premised on the assumption that Deputy Johnson testified on the ultimate issue of Butler's intent, and that, as stated in *Killebrew, supra*, 103 Cal.App.4th 644, such testimony is impermissible because it exceeds the proper scope of expert testimony. In *Killebrew*, where the offense charged was conspiracy to possess a handgun, the trial court erred in allowing a gang expert to testify, through the use of hypothetical questions, that "each of the individuals in the three cars (1) knew there was a gun in [one car] and a gun in [a second car], and (2) jointly possessed the gun with every other person in all three cars for their mutual protection." (*Id.* at p. 658.) The gang expert therefore improperly "testified to the subjective *knowledge and intent* of each occupant in each vehicle" and "simply informed the jury of his belief of the suspects' knowledge and intent on the night in question" which were "issues properly reserved to the trier of fact." (*Id.* at p. 658.)

In contrast to *Killebrew*, the prosecutor in this case did not — as Butler contends — question Deputy Johnson about Butler's specific intent. Instead, the prosecutor asked for Deputy Johnson's expert opinion about (1) whether Butler was an active participant in Sex Cash, and (2) whether the murder was committed for the benefit of, at the direction of, or in association with Sex Cash. In the course of answering the second question, Deputy Johnson also offered his opinion that Butler and Cage's motivation for going into Dorner Blocc territory must have been to force a confrontation. These are permissible subjects for expert testimony. Indeed, in the course of its discussion about the permissible scope of expert testimony, *Killebrew* provided an extensive string cite, listing the types of issues on which a gang expert may permissibly offer an opinion. (*Killebrew*,

*supra*, 103 Cal.App.4th at pp. 656-657.) As relevant here, among those issues were "an individual defendant's membership in, or association with, a gang" (*Killebrew*, at p. 657, citing *People v. Castenada* (2000) 23 Cal.4th 743, 753 (*Castenada*); *People v. Zermeno* (1999) 21 Cal.4th 927, 929; *People v. Duran* (2002) 97 Cal.App.4th 1448, 1464; *People v. Villegas* (2001) 92 Cal.App.4th 1217, 1228; *People v. Galvan* (1998) 68 Cal.App.4th 1135, 1139; *People v. Ruiz* (1998) 62 Cal.App.4th 234, 238; *In re Ramon T.* (1997) 57 Cal.App.4th 201, 204; *People v. Akins* (1997) 56 Cal.App.4th 331, 336; and *In re Elodio O.* (1997) 56 Cal.App.4th 1175, 1178); "whether and how a crime was committed to benefit or promote a gang" (*Killebrew*, at p. 657, citing *Villegas*, at p. 1224; *In re Ramon T.*, at p. 204; *Akins*, at p. 336; and *In re Elodio O.*, at p. 1178); and "motivation for a particular crime, generally retaliation or intimidation" (*Killebrew*, at p. 657, citing *Zermeno*, at p. 930; *People v. Loeun* (1997) 17 Cal.4th 1, 7; *People v. Williams* (1997) 16 Cal.4th 153, 192-193; *Villegas*, at p. 1227; and *People v. Zepeda* (2001) 87 Cal.App.4th 1183, 1208.)

Further, if there was ever any doubt about whether an expert may properly offer an opinion on whether a crime was committed for the benefit of a criminal street gang, our Supreme Court recently resolved that issue in *People v. Albillar* (2010) 51 Cal.4th 47. In *Albillar*, our Supreme Court stated that "[e]xpert opinion that particular criminal conduct benefited a gang by enhancing its reputation for viciousness can be sufficient to raise the inference that the conduct was 'committed for the benefit of . . . a[] criminal street gang' within the meaning of section 186.22[, subdivision ](b)(1)." (*Id.* at p. 63.) Here, as did

the expert witness in *Albillar*, Deputy Johnson permissibly offered an opinion that particular conduct benefited a gang.

We therefore conclude that the expert testimony at issue did not impermissibly offer an opinion on the ultimate issue of Butler's intent, and was well within the scope of issues on which gang experts are qualified to offer testimony. The trial court thus did not abuse its discretion in admitting the testimony.<sup>4</sup>

B. *The Trial Court Did Not Err in Admitting Evidence of a Home Invasion Robbery in Which Butler Was Implicated*

Butler contends that the trial court erred in admitting evidence implicating him in a home invasion robbery carried out several weeks before the murder. Butler contends that the evidence should have been excluded as more prejudicial than probative under Evidence Code section 352.

We begin our analysis by reviewing the facts of the home invasion robbery, as they were presented to the jury. On January 3, 2007, Carol Cockrell was home with her

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<sup>4</sup> We note also that to the extent that Deputy Johnson's testimony was improperly admitted, the error would not have been prejudicial under the applicable standard. (*People v. Watson* (1956) 46 Cal.2d 818, 836.) Numerous witnesses other than Deputy Johnson testified about Butler's involvement with Sex Cash. Deputy Johnson testified that he had spoken to at least 15 people since the murder who told him that the murder benefited Sex Cash's reputation as a violent gang, and Butler himself testified that if the shooting was carried out by a Sex Cash member, it would benefit Sex Cash. In addition, Deputy Johnson explained several times during his testimony that as a general matter gang members do not go into rival gang territory without a reason and would be expecting a confrontation. In short, the expert testimony that Butler identifies as objectionable was cumulative of other evidence at trial. Therefore, it is not reasonably probable that the jury would have reached a verdict more favorable to Butler absent that testimony.

two young grandchildren when the doorbell rang around 5:00 p.m. When Cockrell opened the door, two men with guns entered the house, followed by three others who were obscured from her view. Cockrell was held at gunpoint by one of the men while the other four went upstairs. The men left approximately 10 minutes later, having ransacked the house and taken several valuable items from the house, including jewelry, electronics and a safe. Butler's fingerprints were found at the scene on a box of ammunition and on a vanity drawer. Cockrell knew Butler, but he was not one of the two men she saw during the robbery. At trial, Butler claimed that his fingerprints were found in the house because he was friends with the homeowner's nephew who sometimes visited the house.

At an in limine hearing, defense counsel argued that evidence of the home invasion robbery should be excluded because "[i]t's not necessary, it's cumulative and it's very highly prejudicial to Mr. Butler that just the month before, he was involved in a home invasion robbery." The trial court decided to admit the evidence, concluding that it was relevant to proving that Butler was an active participant in a criminal street gang as required for a conviction under section 186.22, subdivision (a).<sup>5</sup> The trial court explained, "[M]y concern is that we're dealing with active participation, which is defined

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<sup>5</sup> Section 186.22, subdivision (a) creates a substantive criminal offense applying to "[a]ny person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang . . . ." (*Ibid.*) The issue of active participation is also relevant to the special circumstance alleged under section 190.2, subdivision (a)(22), which requires, among other things, a finding that the defendant "intentionally killed the victim while the defendant was an *active participant* in a criminal street gang." (*Ibid.*, italics added.)

as participation which is more than passive or nominal. [¶] That is something that different jurors can interpret differently. Somebody might say that mere association is not active participation, being present at — even present at a crime may not be deemed to be active participation. [¶] So the prosecution needs some leeway in presenting evidence of actions as opposed to simply status or presence."

In weighing the prejudicial effect of the evidence, the trial court pointed out: "Certainly home invasion robbery is a serious crime, but not so serious as murder. [¶] So this is not a case where we have a middle of the road type of crime and we want to introduce evidence of a very inflammatory prior, like sexual abuse or child molestation or rape or something. [¶] Here, we have the most serious type of crime, and the prior is a less serious, less inflammatory case. So the prejudice, to the extent that the jury is going to be inflamed, the jury is going to be misled, seems to me not terribly — it's not a strong danger here. If they're going to be inflamed, they're going to be inflamed by the fact this person put a shell through the head of this teenager. They're not going to be too terribly inflamed by the fact he may have participated in this robbery a month before."

Concluding "that the potential for prejudice clearly outweighs the prejudicial value in this case," the trial court admitted the evidence to establish Butler's active participation in a criminal street gang, and instructed the jury that the testimony about the home invasion robbery was to be considered only with respect to "whether Mr. Butler is an

active participant in a criminal street gang, and whether or not Mr. Butler has a character for violence."<sup>6</sup>

Butler contends that, applying Evidence Code section 352, the trial court should have excluded evidence of the home invasion robbery because "the facts the evidence was admitted to prove were easily proved by other evidence." According to Butler, his active participation was shown by "evidence of gang banging during the present offense"; "gang paraphernalia taken from Butler's home, including pictures of him throwing up gang signs"; "witness testimony, including from his former fiancé[e]"; the fact that he had a gang moniker tattoo; and the fact that he claimed association with Sex Cash when booked into jail.

Evidence Code section 352 provides that "[t]he court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (*Ibid.*) "The trial

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<sup>6</sup> Butler does not take issue with the trial court's instruction that the jury could consider the home invasion robbery as evidence of whether Butler has a character for violence, and we accordingly express no opinion on whether that instruction was proper. We note that during its in limine ruling, the trial court also ruled that evidence of the home invasion robbery would be admitted as "one of the predicates" to establish that Sex Cash engages in a pattern of criminal activity in a specific time period, which would qualify it as a "criminal street gang" as that phrase is defined in section 186.22, subdivision (f). The jury was not instructed that the home invasion robbery also could be used for that purpose. We therefore focus on whether the evidence of the home invasion robbery was properly admitted as evidence of Butler's active participation in a street gang. The extensive discussion in Butler's briefing about whether the evidence of the home invasion robbery was admissible to establish that Sex Cash *engages in a pattern of criminal activity* is accordingly not pertinent to our analysis.

court has broad discretion both in determining the relevance of evidence and in assessing whether its prejudicial effect outweighs its probative value." (*People v. Horning* (2004) 34 Cal.4th 871, 900.) "On appeal, the ruling is reviewed for abuse of discretion." (*People v. Cudjo* (1993) 6 Cal.4th 585, 609.)

Our Supreme Court has stated that the admission into evidence of an uncharged offense, such as the home invasion robbery at issue here, "'requires extremely careful analysis.'" (*People v. Ewoldt* (1994) 7 Cal.4th 380, 404 (*Ewoldt*).) "'Since "substantial prejudicial effect [is] inherent in [such] evidence," uncharged offenses are admissible only if they have *substantial* probative value.'" (*Ibid.*; see also *People v. Lewis* (2001) 25 Cal.4th 610, 637 ["[T]he probative value of the uncharged offense evidence must be substantial and must not be largely outweighed by the probability that its admission would create a serious danger of undue prejudice, of confusing the issues, or of misleading the jury."].) Thus, for example, "where uncharged offense evidence is cumulative, it will often be inadmissible pursuant to Evidence Code section 352." (*People v. Leon* (2008) 161 Cal.App.4th 149, 168-169; see also *Ewoldt*, at p. 406 [evidence of uncharged acts will be inadmissible under Evid. Code, § 352 when it is "merely cumulative regarding an issue that was not reasonably subject to dispute"].) Applying this standard, a trial court will abuse its discretion when it admits evidence of an uncharged crime that is not necessary to establish a disputed factual issue. (See *Leon*, at p. 169 [trial court abused its discretion by admitting evidence of the defendant's prior robbery to show gang participation when the record already contained "overwhelming evidence" establishing that fact].) As we will explain, however, that situation is not

present here because the record does not contain other evidence strongly probative of Butler's active participation in Sex Cash, and thus evidence of the home invasion robbery was admissible to establish that fact.

Active participation in a criminal street gang means involvement "that is more than nominal or passive." (*Castenada, supra*, 23 Cal.4th at p. 747.) The jury was instructed that "'[a]ctive participation' means involvement with a criminal street gang in a way that is more than passive or in name only." Deputy Johnson described Sex Cash's primary criminal activities as street robberies, burglaries and assaults. Although many witnesses testified generally to Butler's association with or membership in Sex Cash — and certain physical evidence (such as Butler's moniker, his tattoo and his possession of gang paraphernalia) corroborated his gang involvement — there was sparse evidence of Butler's active participation in the gang's activities. A sole witness testified that he saw Butler shoot a gun at a party, but Butler denied having done so. Butler also denied committing White's murder in connection with any gang activity.<sup>7</sup> Therefore, evidence that Butler committed a home invasion robbery several weeks before White's murder was not impermissibly cumulative of other evidence of Butler's active participation in Sex Cash. Indeed, Deputy Johnson focused on evidence of the home invasion robbery in

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<sup>7</sup> Indeed, until he testified at trial, Butler denied being present during White's murder. Accordingly, at the time the trial court made its admissibility ruling regarding the home invasion robbery, it was possible that the jury would credit Butler's denial of any involvement in the murder. This made evidence of Butler's other active gang participation even more necessary for obtaining a conviction on the count charging Butler with active participation in a criminal street gang in violation of section 186.22, subdivision (a).



opining that Butler actively participated in Sex Cash, explaining that the evidence would show that Butler was moving up to more serious crimes within the gang, and the prosecutor focused on the same evidence during closing argument to establish Butler's active participation in Sex Cash. Without evidence of the home invasion robbery, it would have been substantially more difficult for the prosecution to make a case for Butler's active participation in Sex Cash.

Not only was the evidence of the home invasion robbery substantially probative of a disputed issue, it was not unduly inflammatory in the context of the murder trial. A trial court may properly consider whether the uncharged act is less inflammatory than the criminal act for which the defendant is charged in determining whether evidence of the uncharged act should be excluded as more prejudicial than probative under Evidence Code section 352. (*Ewoldt, supra*, 7 Cal.4th at p. 405 [the fact that "[t]he testimony describing defendant's uncharged acts . . . was no stronger and no more inflammatory than the testimony concerning the charged offenses" served to "decrease[] the potential for prejudice, because it was unlikely . . . that the jury's passions were inflamed by the evidence of defendant's uncharged offenses"].) As the trial court correctly pointed out, although there was an element of violence during the robbery, in that one of the robbers held Cockrell at gunpoint, that violence pales in comparison to the murder of White, who, at the age of 15, was shot at relatively close range in the back of the head.

We therefore conclude that the trial court was within its discretion in ruling that Evidence Code section 352 did not require the exclusion of evidence relating to the home

invasion robbery, as that evidence was substantially probative of Butler's active participation in Sex Cash and was not unduly prejudicial.<sup>8</sup>

DISPOSITION

The judgment is affirmed.

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IRION, J.

WE CONCUR:

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McCONNELL, P. J.

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HUFFMAN, J.

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<sup>8</sup> Butler also takes issue with testimony that certain jewelry and a safe were found when Butler's house was searched, but those items were not connected to the home invasion robbery. Butler argues that the admission of that evidence implied to the jury that Butler was involved in *other* robberies, and that evidence also should have been excluded under Evidence Code section 352. Evidence of any other robberies committed by Butler were properly admitted on the same basis as evidence of the home invasion robbery, namely to show Butler's active participation in the activities of Sex Cash, which included robbery.